

# Domestic Violence

## 311.1 PURPOSE AND SCOPE

Best Practice NYSLEAP - 8.4 - 44.1

The purpose of this policy is to provide the guidelines necessary to deter, prevent and reduce domestic violence through vigorous enforcement and to address domestic violence as a serious crime against society. The policy specifically addresses the commitment of the Auburn Police Department to take enforcement action when appropriate, to provide assistance to victims and to guide officers in the investigation of domestic violence.

When a domestic violence incident may also include an indication of child abuse, members should refer to the Child Abuse Policy.

### 311.1.1 DEFINITIONS

State NYSLEAP - 8.4 - 44.1

Definitions related to this policy include:

**Court order** - All forms of orders related to domestic violence that have been issued by a court of this state or another, whether civil or criminal, regardless of whether service has been made.

**Domestic violence or domestic incident** - Includes, but is not limited to, physical, psychological, sexual or emotional abuse by one member of a family or household against another member of the family or household. The term includes criminal offenses and family offenses but it may also include a dispute or incident between family or household members that does not rise to the level of a criminal offense. For the purposes of this policy, domestic violence includes all designated family offenses identified in Family Court Act § 812 and CPL § 530.11(1).

**Family offense** - Those offenses specified in Family Court Act § 812 and CPL § 530.11 (see domestic violence definition).

**Member of the same family or household** - Includes (Family Court Act § 812; CPL § 530.11):

- (a) Persons related by blood or marriage.
- (b) Persons legally married to one another.
- (c) Persons formerly married to one another, regardless of whether they still reside in the same household.
- (d) Persons who have a child in common, regardless of whether such persons have been married or have lived together at any time.
- (e) Persons who are or who have been in an intimate relationship, regardless of whether they have lived together at any time. Factors to consider in determining whether a relationship is an "intimate" relationship include, but are not limited to:
  1. The nature or type of relationship, regardless of whether the relationship is sexual in nature.
  2. The frequency of interaction between the persons.

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3. The duration of the relationship.
4. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an intimate relationship.

#### **311.2 POLICY**

**Best Practice** NYSLEAP - 8.4 - 44.1

The Auburn Police Department's response to incidents of domestic violence and violations of related court orders shall stress enforcement of the law to protect the victim and shall communicate the philosophy that domestic violence is criminal behavior. It is also the policy of this department to facilitate victims' and offenders' access to appropriate civil remedies and community resources whenever feasible.

#### **311.3 OFFICER SAFETY**

**Best Practice** NYSLEAP - 8.4 - 44.1

The investigation of domestic violence cases often places officers in emotionally charged and sometimes highly dangerous environments. No provision of this policy is intended to supersede the responsibility of all officers to exercise due caution and reasonable care in providing for the safety of any officers and parties involved.

#### **311.4 INVESTIGATIONS**

**State** NYSLEAP - 8.4 - 44.1

The following guidelines should be followed by officers when investigating domestic violence cases:

- (a) Calls of reported, threatened, imminent, or ongoing domestic violence and the violation of any court order are of extreme importance and should be considered among the highest response priorities. This includes incomplete 9-1-1 calls.
  1. If two officers have not been dispatched, responding officers should request an additional unit to respond to the location.
- (b) When practicable, officers should obtain and document statements from the victim, the suspect, and any witnesses, including children, in or around the household or location of occurrence.
- (c) Officers should list the full name and date of birth (and school if available) of each child who was present in the household at the time of the offense. The names of other children who may not have been in the house at that particular time should also be obtained for follow-up.
- (d) When practicable and legally permitted, video or audio record all significant statements and observations.
- (e) All injuries should be photographed, regardless of severity, taking care to preserve the victim's personal privacy. Where practicable, photographs should be taken by a

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person of the same sex. Victims whose injuries are not visible at the time of the incident should be asked to contact the Detective Bureau in the event that the injuries later become visible.

- (f) Officers should request that the victim complete and sign an authorization for release of medical records related to the incident when applicable.
- (g) If the suspect is no longer at the scene, officers should make reasonable efforts to locate the suspect to further the investigation, provide the suspect with an opportunity to make a statement, and make an arrest or seek an arrest warrant if appropriate.
- (h) Seize any firearms or other dangerous weapons in the home, if appropriate and legally permitted, for safekeeping or as evidence.
- (i) When completing an incident or arrest report for violation of a court order, officers should include specific information that establishes that the offender has been served, including the date the offender was served, the name of the agency that served the order, and the provision of the order that the subject is alleged to have violated. When reasonably available, the arresting officer should attach a copy of the order to the incident or arrest report.
- (j) Officers shall take appropriate enforcement action when there is probable cause to believe an offense has occurred (CPL § 140.10). Factors that should not be used as sole justification for declining to take enforcement action include:
  - 1. Whether the suspect lives on the premises with the victim.
  - 2. Claims by the suspect that the victim provoked or perpetuated the violence.
  - 3. The potential financial or child custody consequences of arrest.
  - 4. The physical or emotional state of either party.
  - 5. Use of drugs or alcohol by either party.
  - 6. Denial that the violence occurred where evidence indicates otherwise.
  - 7. A request by the victim not to arrest the suspect.
  - 8. Location of the incident (public/private).
  - 9. Speculation that the complainant may not follow through with the prosecution.
  - 10. Actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or marital status of the victim or suspect.
  - 11. The social status, community status, or professional position of the victim or suspect.
- (k) Officers shall not ask the victim if he/she wants the suspect arrested and shall not threaten the arrest of any person for the purpose of discouraging requests for police intervention (CPL § 140.10).

### 311.4.1 IF A SUSPECT IS ARRESTED

**Best Practice** NYSLEAP - 8.4 - 44.1

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If a suspect is arrested, officers should:

- (a) Advise the victim that there is no guarantee the suspect will remain in custody.
- (b) Provide the victim's contact information to the jail staff to enable notification of the victim upon the suspect's release from jail.
- (c) Advise the victim whether any type of court order will be in effect when the suspect is released from jail.

#### 311.4.2 IF NO ARREST IS MADE

**Best Practice** NYSLEAP - 8.4 - 44.1

If no arrest is made, the officer should:

- (a) Advise the parties of any options, including but not limited to:
  - 1. Voluntary separation of the parties.
  - 2. Appropriate resource referrals (e.g., counselors, friends, relatives, shelter homes, victim witness assistance).
- (b) Document the resolution in a report.

#### 311.4.3 WEAPON SEIZURE OR SAFEKEEPING PROCEDURE

**State** NYSLEAP - 8.4 - 44.1

Members seizing firearms or weapons at a domestic violence incident should:

- (a) Process any firearms and weapons collected as required by the Identification Bureau Policy.
- (b) Notify any agency issuing firearm permits of the arrestee's name and firearms confiscation.
- (c) Ensure that the court is notified of any licensed firearm.
- (d) Ensure that the court is notified that the arrestee was licensed and whether an arrest was made for a willful failure to obey an order of protection involving any behavior constituting menacing, reckless endangerment, stalking or any other violent behavior, or threatened violent behavior, against a person (Family Court Act § 842-a; Family Court Act § 846-a; CPL § 530.14).

#### 311.5 VICTIM ASSISTANCE

**State** NYSLEAP - 8.4 - 44.1

Because victims may be traumatized or confused, officers should be aware that a victim's behavior and actions may be affected.

- (a) Victims shall be provided with the department domestic violence information handout, even if the incident may not rise to the level of a crime (Family Court Act § 812; CPL § 530.11).

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- (b) Victims shall also be alerted to any available victim advocates, shelters and community resources (Family Court Act § 812; CPL § 530.11).
- (c) When an involved person requests law enforcement assistance while removing essential items of personal property, officers should stand by for a reasonable amount of time.
- (d) If the victim has sustained injury or complains of pain, officers should seek medical assistance for the victim as soon as practicable.
- (e) Officers should ask the victim whether he/she has a safe place to stay and assist in arranging transportation to an alternate shelter if the victim expresses a concern for his/her safety or if the officer determines that a need exists.
- (f) Officers should make reasonable efforts to ensure that any children or dependent adults who are under the supervision of the suspect or victim are being properly cared for.
- (g) If appropriate, officers should seek or assist the victim in obtaining an emergency order.

#### 311.6 FOREIGN COURT ORDERS

**Federal** NYSLEAP - 8.4 - 44.1

Various types of orders may be issued in domestic violence cases. Any foreign court order properly issued by a court of another state, Indian tribe or territory shall be enforced by officers as if it were the order of a court in this state. An order should be considered properly issued when it reasonably appears that the issuing court has jurisdiction over the parties and reasonable notice and opportunity to respond was given to the party against whom the order was issued (18 USC § 2265). An otherwise valid out-of-state court order shall be enforced, regardless of whether the order has been properly registered with this state.

#### 311.7 VERIFICATION OF COURT ORDERS

**Best Practice** NYSLEAP - 8.4 - 44.1

Determining the validity of a court order, particularly an order from another jurisdiction, can be challenging. Therefore, in determining whether there is probable cause to make an arrest for a violation of any court order, officers should carefully review the actual order when available, and, where appropriate and practicable:

- (a) Ask the subject of the order about his/her notice or receipt of the order, knowledge of its terms and efforts to respond to the order.
- (b) Check available records or databases that may show the status or conditions of the order.
  1. This includes checking the statewide order of protection registry.

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- (c) Contact the issuing court to verify the validity of the order.
- (d) Contact a law enforcement official from the jurisdiction where the order was issued to verify information.

Officers should document in an appropriate report their efforts to verify the validity of an order, regardless of whether an arrest is made. Officers should contact a supervisor for clarification when needed.

### 311.8 STANDARDS FOR ARRESTS

State **MODIFIED** NYSLEAP - 8.4 - 44.1

Officers investigating a domestic violence report should consider the following (CPL § 140.10):

- (a) Officers shall arrest a person when there is probable cause to believe that the person has committed one of the following against a family or household member:
  - 1. Any felony offense (other than certain grand larceny offenses)
  - 2. Any misdemeanor family offense unless the victim requests otherwise
- (b) Officers should make an arrest, unless a decision not to arrest has been made by a supervisor, when:
  - 1. A misdemeanor domestic violence incident occurs where the victim has requested that no arrest be made.
  - 2. In all other domestic violence incidents for offenses as permitted by CPL § 140.10. A decision not to make an arrest in these circumstances should be made by a supervisor but only when there is a clear and compelling reason not to make an arrest.
- (c) Officers shall make an arrest for certain violations of a duly served order of protection, an order of protection of which the defendant has actual knowledge of because he/she was present in court when such order was issued, or other court orders related to domestic violence found in the following provisions:
  - (a) Domestic Relations Law § 240 (custody and child support)
  - (b) Domestic Relations Law § 252 (actions for divorce)
  - (c) Family Court Act Articles 4, 5, 6 or 8 (support, paternity, termination/adoption or family offenses proceedings)
  - (d) CPL § 530.12 (protection for victims of family offenses)
  - (e) CPL § 330.20 (procedure following verdict or plea of not responsible by reason of mental disease or defect)
    - These arrests require that:
      - The arrest shall be made if the person violates a stay-away provision included in one of the above orders or if the person commits a family offense in violation of the court order.

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- The protected party in whose favor the order of protection or temporary order of protection is issued may not be held to violate an order issued in his/her favor nor may such protected party be arrested for violating such order.
- (d) In cases involving a misdemeanor family offense, if there is probable cause to believe that more than one family or household member committed such offense, an officer is not required to arrest both parties. The officer shall attempt to identify and arrest the primary aggressor using factors including but not limited to (CPL §140.10):
- (a) The comparative extent of any injuries inflicted by and between the parties.
  - (b) Whether any party is threatening or has threatened future harm against another party or another family or household member.
  - (c) Whether any party has a prior history of domestic violence that the officer can reasonably ascertain.
  - (d) Whether any party acted defensively to protect him/herself from injury.
  - (e) The decision to arrest or not to arrest shall not be based on the willingness of a person to testify or otherwise participate in a judicial proceeding.
- (e) Officers should take a report from a victim of a family offense even if the offense did not occur in the jurisdiction of the Auburn Police Department, (Executive Law § 646), when the agency of the appropriate jurisdiction is not available for direct referral.

### 311.9 REPORTS AND RECORDS

State **MODIFIED** NYSLEAP - 8.4 - 44.1

If the domestic incident involves a crime or an offense between family or household members, officers shall complete a written report on the form provided by the New York State Division of Criminal Justice Services, regardless of whether an arrest is made (CPL § 140.10).

- (a) If it is determined that the suspect or arrestee is on probation or parole, the Records Bureau shall ensure that a copy of the written report is sent to the supervising probation or parole officer.
- (b) If an offense is committed against a person who is 65 years of age or older, the Records Bureau shall ensure that a copy of the report is sent to the committee for the coordination of police services to elderly persons via DCJS.
- (c) If the complaint stems from a victim of a family offense that occurred outside of the jurisdiction of the Auburn Police Department, the Records Division shall ensure that a copy of the written report is provided to the complainant and also promptly sent to the appropriate law enforcement agency (Executive Law § 646).

### 311.10 SERVICE OF COURT ORDERS

State NYSLEAP - 8.4 - 44.1

Officers who receive a copy of a temporary order of protection or an order of protection issued upon default shall make a reasonable effort to serve the named person with the order along with

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the summons, petition or any other associated papers (Domestic Relations Law § 240; Family Court Act § 153-b).

Upon service, the officer shall notify the issuing court that service was achieved and notify the statewide computer registry regarding the date and time of service (Domestic Relations Law § 240; Family Court Act § 153-b).

Officers may also assist in the service of a court order upon request of the protected person.

#### 311.10.1 ORDER OF PROTECTION REGISTRY

State | NYSLEAP - 8.4 - 44.1

When an officer receives a copy of an order of protection, special order of conditions, or warrant that pertains to an order of protection or special order of conditions, the required information shall be immediately entered into the order of protection registry (Executive Law § 221-a).

#### 311.11 POLICE OFFICER INVOLVED IN DOMESTIC VIOLENCE

Agency Content

Where incidents of domestic violence involving a police officer are alleged to have occurred, the Auburn Police Department will act quickly to protect the victim(s), arrest the perpetrator, and conduct parallel administrative and criminal investigations. This policy delineates a position by the Auburn Police Department of absolute intolerance (i.e. zero tolerance) of domestic violence. An officer found guilty of domestic violence, either through criminal court or an administrative hearing, may have his/her police powers revoked.

[Police Officer Involved in Domestic Violence Procedure](#)

#### 311.12 DOMESTIC VIOLENCE HIGH RISK TEAM (DVHRT)

Agency Content

The Auburn Police Department and its collaborative partners are committed to use of the NYS Domestic Incident Report (DIR) for referral of high-risk cases to the DVHRT Program. Auburn Police Department will share all DIRs with the Program Coordinator, who will screen and assess all cases to identify those deemed high-risk. All cases deemed high-risk by the Coordinator will be referred to the DVHRT. Partners may additionally identify and refer high-risk cases directly to the DVHRT. Victims who seek services who have not had any law enforcement involvement will also be screened for risk by CAP Domestic Violence Advocates within the Domestic Violence Intervention program, utilizing a form created by the DVHRT Coordinator.

[Domestic Violence High Risk Team \(DVHRT\) Procedure](#)